

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through Incentive)	
Auctions)	
To: The Commission		

COMMENTS OF UNIVISION COMMUNICATIONS INC.

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EXECUTIVE SUMMARY

As the premier Spanish-language media company in the United States, Univision appreciates the opportunity to share its unique perspective on how the proposals in the NPRM would affect America's more than 50 million Hispanics—a community that represents more than half of our country's population growth over the last decade.

Hispanic television viewers would be uniquely disadvantaged if the repacking process disrupts or diminishes Spanish-language broadcasters' valuable over-the-air service. Recent studies show that approximately one-quarter of all Hispanic households and one-third of Hispanic households that prefer to speak Spanish at home rely *exclusively* on over-the-air television, rather than cable, satellite, or other MVPD services. The percentage of over-the-air viewing for affiliates of the Univision and UniMás networks is even higher in some of the largest Hispanic markets. It is vitally important that the Commission ensure that this minority community is not left in the dark—literally—after a repacking.

To this end, Univision urges the Commission to:

- Avoid doing harm to Hispanic viewers, who rely in disproportionately large numbers on over-the-air television service as their primary source for news, public affairs, entertainment and sports programming, and emergency alerts;
- Make additional efforts to ensure that the interference standard that is adopted preserves stations' existing populations served;
- Preserve the station facilities specified in pending maximization applications, unbuilt construction permits, and certain pending license applications as of February 22, 2012;
- Avoid imposing unnecessary costs on low power television stations in a repacking; and
- Adopt flexible rules for stations' post-auction operations that permit stations to address "on the ground" realities and that relax the television service rules to encourage more flexible uses of broadcast television spectrum.

These steps would ensure that the Commission’s implementation of an incentive auction and repacking advances Congressional intent and objectives in enacting the Spectrum Act. They also would help ensure that all television viewers—and, in particular, those in Spanish-speaking or other minority communities for whom broadcast television service provides a fundamental connection to family, community, and civic institutions—will not be subject to reduced service or disenfranchisement as a result of another repacking of the television band.

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As the premier Spanish-language media company in the United States, Univision Communications Inc. (“Univision”) brings a unique perspective to this proceeding. Univision’s broadcast stations,¹ together with Univision’s flagship Univision Network and the UniMás Network,² lead the industry in informing, entertaining, and empowering Hispanic viewers.³ The preservation of existing over-the-air broadcast service remains vitally important to the community Univision serves.

Univision agrees with the Commission that the incentive auction and subsequent repacking “will be a groundbreaking event for the broadcast television, mobile wireless, and technology sectors of our economy.”⁴ Not only is the incentive auction the first of its kind, but the Commission also is introducing innovative, interrelated, and complicated concepts, including

¹ Univision, through its subsidiaries, owns and operates 62 full power, Class A, and low power television stations across the country, most of which are affiliated with its Univision Network and UniMás Network.

² Univision launched the UniMás Network, previously known as TeleFutura, on January 7, 2013.

³ Univision also recently announced that Univision-owned stations in seven of the top U.S. television markets will begin broadcasting Bounce TV, a national broadcast television network serving African American viewers, as a multicast stream. The agreement expands distribution of Bounce TV to 86 percent of African American television homes. See Press Release, Univision, “Univision to Carry Bounce TV in Seven Major Markets in Groundbreaking Distribution Agreement Teaming Leading Hispanic & African American Media Companies” (Dec. 10, 2012), <http://corporate.univision.com/2012/press/univision-to-carry-bounce-tv-in-seven-major-markets-in-groundbreaking-distribution-agreement-teaming-leading-hispanic-african-american-media-companies/#axzz2GrrMz6Ht>.

⁴ *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, GN Docket No. 12-268, ¶ 4 (rel. Oct. 2, 2012) [hereafter, “NPRM” or the “Notice”].

channel sharing arrangements and variable band plans, that will have a significant impact on the repacking process. These Comments identify five key areas where we believe the Commission's proposals could be improved, thereby increasing the chances of a successful incentive auction and repacking while preserving the over-the-air television service on which the Hispanic community and many other viewers uniquely rely.

First, the Commission's repacking rules should avoid doing harm to Hispanic viewers, who rely in disproportionately large numbers on over-the-air television service as their primary source for news, public affairs, entertainment and sports programming, and emergency alerts.

Second, the Commission should make additional efforts to preserve stations' existing populations served, including adoption of an interference standard that will not cause substantial disruption to existing viewers.

Third, the Commission's repacking rules should preserve the station facilities specified in maximization applications, construction permits, and certain license applications that were pending as of February 22, 2012.

Fourth, the Commission should avoid imposing unnecessary costs on low power television stations in a repacking.

Fifth, the rules governing stations' post-auction operations must be flexible, so that stations and their viewers are able to address technical and operational issues that cannot be predicted but are likely to arise; and the Commission should initiate a proceeding to relax its television service rules to encourage more flexible uses of broadcast television spectrum.

Together, these adjustments to the NPRM's proposals will help avoid the adoption of rules that unfairly pick "winners" and "losers" in the incentive auction and repacking and ensure that television viewers, especially those in Spanish-speaking or other minority communities, are not subject to reduced service or disenfranchisement.

I. THE COMMISSION’S REPACKING RULES SHOULD AVOID DOING HARM TO HISPANIC VIEWERS, WHO RELY DISPROPORTIONATELY ON OVER-THE-AIR TELEVISION SERVICES.

America’s Hispanic households represent a significant portion of the population and will be an increasingly important audience in the digital era. The 2010 U.S. Census reports that there are more than 50 million Hispanics, representing 16 percent of the nation’s total population and more than half this country’s population growth over the prior decade.⁵ By 2020, there will be nearly 64 million U.S. Hispanics, representing 19 percent of the total population.⁶ By 2030, there will be nearly 79 million, representing 22 percent of the total population.

Hispanic viewers would be at a unique disadvantage if the repacking process diminishes Spanish-language broadcasters’ ability to provide their valuable over-the-air television service to the public. These viewers rely disproportionately on over-the-air television as their primary source for news, public affairs, entertainment and sports programming, and emergency alerts.⁷ According to a 2012 report by the research firm GfK Knowledge Networks, 26 percent of all Hispanic households—or 3.3 million U.S. households—rely on free, over-the-air television *exclusively*, rather than subscribing to multichannel video programming distribution (“MVPD”) services.⁸ GfK Networks also reports that, among Hispanic households that prefer to speak Spanish at home, one-third rely on over-the-air television *exclusively*.⁹

⁵ Press Release, Univision, “Univision Insights: 2010 Census Shows Hispanic Population at 50 Million Strong and Accounting for 56 Percent of U.S. Population Growth” (Mar. 2011), <http://corporate.univision.com/2011/press/univision-insights-2010-census-shows-hispanic-population-at-50-million-strong-and-accounting-for-56-percent-of-u-s-population-growth/#axzz2Ivzt9yoW>.

⁶ U.S. Census Bureau, *2012 National Projections* (Dec. 2012).

⁷ Letter from the Chairs of the Cong. Tri-Caucus to Julius Genachowski, Chairman, Fed. Commc’n Comm’n (Sept. 21, 2012), http://www.nab.org/documents/newsRoom/pdfs/092112_TriCaucus_spectrum_letter.pdf (“Tri-Caucus Letter”).

⁸ *GfK-KnowledgeNetworks Home Technology Monitor Survey* (Spring 2012).

⁹ *Id.*

The percentage of over-the-air viewing for affiliates of the Univision and UniMás networks, respectively, is even higher in a number of large Hispanic markets: for example, 41 percent and 55 percent in the Houston designated market area (“DMA”), the fourth largest Hispanic DMA; 57 percent and 65 percent in the Dallas-Ft. Worth DMA, the fifth largest; 65 percent and 74 percent in the Phoenix DMA, the ninth largest; and 51 percent and 73 percent in the Fresno-Visalia DMA, the 14th largest. In the Los Angeles DMA, the Number One Hispanic DMA, Nielsen reports that 35 percent of the households watching Univision and 47 percent of the households watching UniMás do so exclusively over the air.¹⁰

Given the reliance these viewers place on Spanish-language stations’ important over-the-air television service, it is vitally important that the Commission’s repacking rules avoid doing harm to Hispanic viewers and the Spanish-language stations that serve them. Each of Univision Network’s affiliated stations in Los Angeles, Houston, Dallas, San Francisco, Sacramento, Fresno, Austin, and Tucson (tie) was ranked Number One in early local news, regardless of language, among Adults 18-49 in the most recent November 2012 sweeps.¹¹ As the Congressional Tri-Caucus wrote to Chairman Genachowski last fall, “Given the dependence that our communities place on broadcast television . . . maintaining a robust free and local broadcasting system must remain a priority for the FCC.”¹²

¹⁰ Nielsen, Local Custom Toolbox, Nielsen Station Index Impressions (Nov. 2012); Nielsen Local Television Market Universe Estimates: Hispanic or Latino TV Homes Estimates as of January 1, 2013.

¹¹ Nielsen, Nielsen Station Index, November 2012 Sweep (10/25/2012-11/21/2012) (LPM markets (Los Angeles, Houston, Dallas, San Francisco, Sacramento) based on Live+Same Day data; Set Meter market (Austin) based on Live+7 data; Diary markets (Fresno and Tucson) based on Live+ 1 data).

¹² Tri-Caucus Letter.

II. THE COMMISSION’S PROPOSALS DO NOT SATISFY THE STATUTORY DIRECTIVE TO MAKE ALL REASONABLE EFFORTS TO PRESERVE THE POPULATION SERVED OF FULL POWER AND CLASS A STATIONS.

In the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”), Congress directs the Commission to make “all reasonable efforts to preserve” both “the coverage area and population served” as of February 22, 2012 for all full power and Class A television licensees.¹³ The proposals contained in the Notice, however, fall short of meeting this statutory standard and would be detrimental to the Hispanic community and other minority viewers in particular. Specifically, the Commission could better preserve stations’ “population served” by adopting interference standards consistent with the methodology and standards that were used successfully in the digital television transition. This reasonable improvement will help ensure that Spanish-language stations’ existing service is preserved, consistent with the directive in the Spectrum Act.

The Notice proposes three potential interference standards to be used by the Commission in determining whether the population served by a broadcast television station is adequately preserved under the statutory standard:

- The first standard focuses on the *total* population served by a station and would allow interference if, in the aggregate, the population served by a station as of February 22, 2012 would be reduced by no more than 0.5 percent.
- The second standard would focus on interference to *specific* viewers served by a station, but would allow interference to increase up to 0.5 percent on a station-to-station basis.
- The third standard would permit any interference that existed between any two stations as of February 22, 2012, and separately would authorize higher interference (up to

¹³ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6403(b)(2), 126 Stat. 156 (Feb. 22, 2012) [hereinafter “Spectrum Act”].

2 percent) to stations that did not interfere with each other as of that date.¹⁴

Each of the three proposed interference standards presumes that the public interest would be served if television stations remaining on the air following an incentive auction are required to, and do, accept increased interference. But Univision submits that this presumption is at odds with the Congressional directive that the Commission use all reasonable efforts to “preserve” the population served of each remaining station. Indeed, the premise underlying all three of the proposed standards appears to be that existing populations will *not* be “preserved.”

As the Commission well knows from its experience designing and implementing the repacking of the television band in connection with the digital transition, an interference standard greater than 0.5 percent generally will cause a “substantial disruption for viewers due to interference between stations.”¹⁵ This is especially true for stations that are licensed to communities located along the outer fringes of a DMA, which may not be able to utilize the same antenna sites as other stations that are more centrally located. Many Spanish-language stations are licensed to such communities.

The Commission should adopt an interference standard that would permit increased interference only where all other reasonable efforts to avoid new interference have failed. This concept informed the Commission’s approach in repacking the television band for the digital television transition. In developing the DTV Table of Allotments and processing stations’ initial applications for post-transition digital operations, the Commission adopted an

¹⁴ *Id.* ¶¶ 103–08.

¹⁵ *In the Matter of Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion To Digital Television*, Report and Order, 23 FCC Rcd. 2994, ¶ 159 (rel. Dec. 31, 2007).

interference standard of 0.1 percent of a station's interference-free service population.¹⁶ As will be the case in the currently-proposed repacking (where stations will be assigned new channels), this interference standard was intended "to minimize as much as possible any interference as a result of a station moving to its analog channel for post-transition [digital] operation, rather than remaining on its pre-transition digital channel for post-transition service."¹⁷ Only after television stations were authorized to replicate their existing services on post-transition digital channels did the Commission permit interference increases of up to 0.5 percent by stations maximizing their facilities.¹⁸ Univision urges the Commission to adopt a similar approach here for purposes of assigning stations to new channels in connection with a repacking.

Under this approach, the Commission would initially make all reasonable efforts to assign channels using a 0.1 percent limit on increased interference from a single contributor. Only after determining, through an actual nationwide repacking trial run, that application of this limit would fail to clear a reasonable amount of spectrum for wireless broadband should a different standard be considered. Even in such circumstances, the Commission should adopt a slightly modified version of the second option proposed in the NPRM. Under this approach, any repacked station could receive interference from another station or stations, provided that any interfering station considered alone would not reduce the number of current viewers by more than 0.5 percent and provided further that the amount of total additional interference is capped at 1.0 percent.

¹⁶ See, e.g., *In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order and Eighth Report and Order, 23 FCC Rcd. 4220, ¶¶ 8–11 (rel. Mar. 6, 2008).

¹⁷ *In the Matter of Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, Report and Order, 23 FCC Rcd. 2994, ¶ 158 (rel. Dec. 31, 2007).

¹⁸ See, e.g., *In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order and Eighth Report and Order, 23 FCC Rcd. 4220, ¶ 13 (rel. Mar. 6, 2008).

The Commission’s proposal that greater interference be permitted in markets that reach a threshold rate (*i.e.*, 70 percent) of MVPD penetration,¹⁹ if adopted, would only exacerbate the potential harm of a repacking to communities that skew disproportionately toward over-the-air viewing—such as Spanish-speaking and minority communities. In Los Angeles, the largest Hispanic television market, no more than 10 percent of the audience viewing each of the ABC, CBS, NBC and FOX affiliates does so over the air. In sharp contrast, however, more than 30 percent (and in some cases more than 40 percent) of the audience viewing each of the Univision, UniMás, Telemundo, Azteca, Estrella and MundoFox affiliates does so over the air.²⁰ Yet Nielsen reports that the Los Angeles DMA has nearly 88 percent MVPD penetration.²¹ Permitting greater interference in markets such as Los Angeles with high average MVPD penetration rates, therefore, would have a significantly disparate, and deleterious, impact on Spanish-speaking and minority communities.

Consistent with the language and intent of the Spectrum Act, *i.e.*, that the Commission make “all” reasonable efforts to preserve stations’ population served, the Commission must avoid basing interference standards on MVPD penetration rates. Instead, the Commission should *prioritize* stations with high over-the-air viewership in the repacking.

III. THE COMMISSION’S REPACKING RULES SHOULD PRESERVE THE STATION FACILITIES SPECIFIED IN MAXIMIZATION APPLICATIONS, CONSTRUCTION PERMITS, AND CERTAIN LICENSE APPLICATIONS PENDING AS OF FEBRUARY 22, 2012.

In the NPRM, the Commission interprets the Spectrum Act to *require* reasonable efforts to preserve the coverage area and population served only of full power and Class A television station facilities “that were licensed, or for which an application for license to cover

¹⁹ NPRM ¶ 110.

²⁰ Nielsen, Local Custom Toolbox, Nielsen Station Index Impressions (November 2012).

²¹ *Id.*

authorized facilities already was on file with the Commission, as of February 22, 2012.”²² The Commission also interprets the Spectrum Act to *permit* the Commission to protect “additional facilities where appropriate.”²³ Pursuant to this statutory authority, the Commission proposes to preserve in the repacking process the coverage areas and populations served of (1) new full power television station facilities authorized and with construction permits pending, but unbuilt, as of February 22, 2012,²⁴ and (2) certain digital Class A facilities that were not licensed as of that date.²⁵

Univision believes that the class of protected full power and Class A facilities proposed in the Notice should be expanded to include full power and Class A facilities (1) for which maximization applications were pending as of February 22, 2012, but are not granted until after that date due to circumstances beyond the licensee’s control, (2) which, as of February 22, 2012, were subject to valid but unbuilt construction permits specifying construction deadlines after that date, and (3) for which certain Class A license applications were pending as of February 22, 2012, but are not granted until after that date. A modest extension of the statutorily-mandated protections in these limited circumstances not only would avoid unfairly disadvantaging stations but also would allow the public—and Hispanic viewers in particular—to receive the benefits of improved broadcast television service that the Commission previously has determined are in the public interest.

²² NPRM ¶ 98.

²³ *Id.* ¶ 113.

²⁴ *Id.* ¶ 114.

²⁵ *Id.* ¶ 115.

A. The Commission Should Protect the Facilities of Full Power Stations that were Specified in Maximization Applications Pending as of February 22, 2012, but which were Not Granted until after that Date Due to Circumstances beyond the Licensee's Control.

Stations should not be penalized where their timely-filed maximization applications remained pending as of February 22, 2012, due to circumstances beyond their control. Especially for stations located near the southern border of the United States, coordination with the Mexican government can be a lengthy process that stretches on for years, even where the application fully complies with technical requirements contained in the international treaty. Thus, where approval of a maximization application is delayed due to coordination challenges along the Mexican border, it is appropriate to preserve the coverage area and population served of the facilities specified in the application which is granted after February 22, 2012.

Univision's proposals to maximize the facilities of its Los Angeles stations, KMEX-DT and KFTR-DT, illustrate the delay that can occur when a maximization application seeking technically compliant facilities is subject to international coordination. KMEX and KFTR serve over 7 million Hispanics living in the Los Angeles market—the largest Hispanic community in the United States. Over one-third of the KMEX audience watches Univision over the air *exclusively*, and among adults ages 18-49, KMEX is the top-rated station in the entire United States for early local news, in any language.²⁶ Approval of KMEX's maximization application was delayed for more than four years as it made its way through the process of coordination with Mexico. KMEX's maximization application, which was filed on June 20, 2008 and amended on October 14, 2009 at the request of the Mexican government, was not

²⁶ See Press Release, Univision, "Ending Another Banner Year of Ratings Success: Univision in 2012" (Dec. 21, 2012), <http://corporate.univision.com/2012/content-types/articles/ending-another-banner-year-of-ratings-success-univision-in-2012/#ixzz2GsmYasw6>.

granted until November 8, 2012. In reliance on grant of the construction permit and with the expectation that the maximized facilities would be afforded interference protection on the same basis as other authorized full power facilities, KMEX worked diligently to construct and activate its maximized facilities and filed a license application on December 3, 2012. Meanwhile, sister station KFTR filed a maximization application on April 26, 2010—nearly two years before the February 22, 2012 date. Yet the application remains pending due to coordination delays with Mexico, even though Univision believes this proposal complies fully with the treaty’s technical requirements.

Denying service protection to technically compliant facilities specified in a timely maximization application filed in good faith and pending on February 22, 2012 for reasons beyond the applicant’s control would be inequitable and contrary to the public interest. As explained above, Hispanic and other minority viewers who are most dependent on maximized facilities to receive robust over-the-air television services would be the most likely to suffer service disruptions if these facilities are not protected in a repacking.

B. A Repacking Should Protect Full Power Facilities which, as of February 22, 2012, Were Authorized Pursuant to Valid but Unbuilt Construction Permits Specifying Construction Deadlines after that Date.

Similarly, basic fairness and the public interest warrant preservation of the coverage areas and populations served by full power station facilities that were authorized by valid construction permits on February 22, 2012, specifying a construction deadline in the ordinary course after that date. Indeed, such facilities are analogous to the unbuilt digital Class A facilities that the Commission proposes to protect.

As the Commission recognizes, it would be “fundamentally unfair” and “deprive the public of important benefits” to deny protection for unbuilt Class A stations because their licensees made their construction plans “in reliance on” previously adopted Commission rules

setting deadlines after February 22, 2012.²⁷ Like these Class A stations, full power stations subject to a construction deadline after February 22, 2012 acted in reliance on valid, extant construction permits that afford them a three-year period to complete construction. For example, a construction permit authorizing maximization of the facilities of Univision's station WFTY-DT at Smithtown, New York, granted on December 15, 2011, does not require the station to complete construction until December 15, 2014. Univision relied on this deadline in making its construction plans for WFTY. Univision completed construction within five months following grant, two months after the February 22, 2012 date specified in the Notice. Univision had no constructive notice of a February 22, 2012 "lock in" of protected service at the time its construction permit was granted.

Unless afforded the same service protection as other full power stations, stations that have relied in good faith on construction periods specified in permits issued prior to the Notice stand to lose all the gains achieved through maximization, and at considerable expense. Failure to preserve the facilities of WFTY and similarly situated stations would have the practical effect of retroactively, and arbitrarily, amending these stations' construction deadlines to February 22, 2012. Such a result would be fundamentally unfair and contrary to the public interest.

C. The Commission Should Protect the Facilities of Television Stations that Had a Class A License Application Pending as of February 22, 2012, but Received Class A Status after that Date.

In 2004, Univision filed a license application to convert its low power television station KABE-CD, Bakersfield, California, to Class A status. This application was filed simultaneously with an application for an analog displacement construction permit, which was

²⁷ NPRM ¶ 115.

opposed by another broadcaster. The station subsequently applied for and was granted a digital flash-cut construction permit, and then applied for and was granted a license to cover that facility. The KABE license application for Class A status remained pending throughout this period, during which Univision operated the station in compliance with Class A service requirements. Earlier this year, the Media Bureau requested that KABE file a new Class A license application, which it granted on January 17, 2013. Clearly, KABE would be substantially, and arbitrarily, prejudiced were it to be denied service protection because it was granted Class A status after February 22, 2012—after nearly a decade-long delay. Univision therefore requests that the Commission protect KABE’s digital television facilities in a repacking. Over the air service is particularly important in the Bakersfield DMA, where 68 percent of the households that watch Univision do so without MVPD service and rely on over-the-air television *exclusively*.²⁸

IV. THE COMMISSION SHOULD AVOID IMPOSING UNNECESSARY COSTS ON LOW POWER TELEVISION STATIONS IN A REPACKING.

The Commission interprets the Spectrum Act to make only full power and Class A television station licensees eligible for reimbursement of costs incurred in relocating to new channel assignments as a result of the repacking.²⁹ If the Commission excludes low power television stations from the reimbursement process, it should take steps to ensure that these stations do not incur unnecessary costs that could impede their ability to continue offering television service to the public.

In particular, because all low power television stations have moved or soon will move to digital channels in order to meet the September 2015 cutoff for analog low power

²⁸ Nielsen, Local Custom Toolbox, Nielsen Station Index Impressions (Nov. 2012).

²⁹ NPRM ¶ 337.

television station operations, it would be unfair to require these stations to incur unnecessary costs by moving yet again to replacement digital channels in connection with a repacking. The deadline for low power television stations to transition to all-digital operations may well come and go before a repacking even begins.³⁰ Consequently, the Commission should avoid, where possible, requiring a low power television station to move to a new channel position twice (first in connection with the low power television digital transition and then again in connection with a repacking). These steps would help avoid doubling an LPTV station's relocation costs, including tower crew expenses and equipment modifications. Where a second move is unavoidable and the low power television station has not yet transitioned to all-digital operations, the Commission should waive the September 2015 deadline until after the repacking has been concluded.

V. THE RULES GOVERNING STATIONS' POST-AUCTION OPERATIONS MUST BE FLEXIBLE, SO THAT STATIONS AND THEIR VIEWERS ARE ABLE TO ADDRESS TECHNICAL AND OPERATIONAL ISSUES THAT CANNOT BE PREDICTED BUT ARE LIKELY TO ARISE AS A RESULT OF AN INCENTIVE AUCTION AND REPACKING.

Although it likely will be years before the incentive auction is concluded, the Commission appropriately has begun to ask questions now about new procedural and substantive rules that will affect television stations that remain on air after the incentive auction and repacking. These inquiries help ensure that the repacking process is transparent and provides

³⁰ A number of variables, including the introduction of channel sharing arrangements and variable band plans, are likely to make this transition process even more complicated than the transition to all-digital television operations, which began in the mid-90s and was not completed until June 13, 2009. To help simplify the incentive auction and repacking process and provide much needed certainty for stations, Univision urges the Commission to expeditiously conclude related proceedings that could impact participation in the incentive auction process, including the open proceeding related to the clearing of channel 51. *See* Public Notice, "General Freeze on the Filing and Processing of Applications for Channel 51 Effective Immediately and Sixty (60) Day Amendment Window For Pending Channel 51 Low Power Television, TV Translator and Class A Applications," DA 11-1428 (Aug. 22, 2011).

stations predictability that is important in determining whether and how they will participate in the incentive auction.

Univision urges the Commission, however, to avoid imposing inflexible deadlines and prescriptive rules for stations' post-incentive auction operations. Instead, the Commission should develop a high-level, flexible framework in its rules. Specifically, Univision encourages the Commission to:

- provide stations up to 180 days after new channel assignments are published to file construction permit applications;
- permit stations to propose limited extensions of their coverage, in any direction, consistent with the approach used in the digital television transition;
- give stations a minimum of 24 months to construct new facilities after the date channel assignments are published;
- adopt a phased-in transition timetable, based on region; and
- initiate a proceeding to relax its television service rules to encourage more flexible uses of broadcast television spectrum.

Because it is difficult to predict how the industry and technology will evolve before the incentive auction and repacking are completed, and because this first-of-its-kind process likely will raise unanticipated issues for stations and their viewers, this additional flexibility will help stations and the Commission respond to such challenges.

A. Stations Should Have Up To 180 Days After New Channel Assignments Are Published To File Construction Permit Applications.

Once stations learn their new channel assignments, they will need to coordinate with a number of independent third parties in a short period of time to prepare their construction permit applications.³¹ For example, third-party technical consultants, who typically have many

³¹ See, e.g., NPRM ¶ 316.

television station clients, will need to load new databases for each client and prepare engineering exhibits for multiple construction permit applications. Antenna manufacturers will have to evaluate the feasibility of achieving radiation patterns that are specified by the Commission. Stations will need time to deal with inevitable “on-the-ground” challenges, such as limited tower space availability. Offering a 180-day period for stations to file their construction permit applications should provide sufficient flexibility to accommodate each of these important tasks and unpredictable events.

B. Stations Should Be Permitted To Propose Limited Coverage Extensions In Any Direction, Consistent With the Flexible Approach Used In the Digital Television Transition, at the Construction Permit Application Stage.

The Notice proposes to allow stations to suggest alternative transition facilities to those specified by the Commission’s replication software, but only if the alternative facilities “would not extend [a station’s] coverage area in any direction beyond those specified by [such] replication software or cause new interference.”³² Because it is highly unlikely that “real world” antenna radiation patterns will precisely match the antenna characteristics derived by the Commission’s coverage replication software,³³ the Commission’s proposed standard would impede stations’ ability to account for real-world obstacles that might not be addressed in the Commission’s replication software.

The Commission could provide stations with greater flexibility by applying the same *de minimis* standard used for minor expansion applications during the digital television transition. Under this standard, the Commission allowed expedited approval of minor expansion

³² *Id.* ¶ 101.

³³ Because most existing directional antennas are slotted-cylinder (narrowband) models that cannot be used on other channels, new antennas generally will be required. The changes in physical dimensions that inherently result from new channel assignments will impact the extent to which idealized radiation patterns can be matched. Wideband, multichannel antennas exhibit small variations in radiating characteristics through the span of the television broadcast band. Even where stations can use existing antennas, their radiating characteristics on the new channel will not precisely match those derived by the Commission’s replication software.

applications filed by stations that were not using their pre-transition digital television channel for post-transition operations as long as the expansion met certain specified criteria.³⁴ For example, the expanded service area could not extend more than five miles farther in any direction than the station's authorized service area.³⁵ In addition, the expansion could not cause more than 0.5 percent new interference to other stations.³⁶ Applying these two criteria to stations' post-incentive auction operations would afford the flexibility that is necessary to suggest alternative facilities without disrupting the transition process.

C. Stations Should Have a *Minimum* Of 24 Months After the Date Channel Assignments Are Published To Construct Their New Facilities.

The Commission asks whether 18 months would be a reasonable timeframe for stations to complete the transition to their new channel assignments.³⁷ Univision believes many stations will need at least two years after the new channel assignments are published to complete construction of their new facilities. Some stations, for example, will need additional time to replace or modify narrow-banded transmitters, channel mask filters, or antennas. In addition, stations that serve viewers located along the borders of Mexico or Canada will need at least 24 months (and possibly even longer) for international coordination.

Providing stations a longer period of time to complete construction of their new facilities also will help account for unpredictable events that could cause delays. For example, a hurricane or forest fire or, at higher elevations, even normal winter weather, could make it difficult for facilities to be completed in just 18 months. In addition, this first-of-its-kind incentive auction and repacking process introduces a number of new variables that could raise

³⁴ *In the Matter of Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, Report and Order, 23 FCC Rcd. 2994, ¶ 151 (rel. Dec. 31, 2007).

³⁵ *Id.*

³⁶ *Id.*

³⁷ NPRM ¶ 322.

unique challenges. For example, stations that enter into channel sharing arrangements may require additional time to coordinate and complete the transition. Univision urges the Commission to provide a *minimum* of 24 months for stations to complete the transition to new channel assignments.

D. The Commission Should Adopt a Phased-In, Regional Transition Timetable.

Univision supports the Commission's proposal to adopt a phased-in transition timetable based on geographic region.³⁸ As the Notice recognizes, this approach will help address regional weather and seasonal issues, such as long stretches of time where facilities are inaccessible due to ice and heavy snowfall.³⁹ In addition, a regional timetable helps ensure that the transition will be efficient and reduce costs. For example, tower crews can be deployed more efficiently, equipment is more likely to be reused, and delivery costs would be reduced.

E. The Commission Should Initiate a Proceeding To Relax Its Television Service Rules To Encourage More Flexible Uses of Broadcast Television Spectrum.

The Spectrum Act provides that, in lieu of reimbursement, a station may secure a waiver of the service rules to make flexible use of its retained spectrum in order to provide non-broadcast television services.⁴⁰ Univision agrees with the underlying principle that the public interest would be served if broadcasters are given flexibility to innovate and use their spectrum for a variety of uses beyond the delivery of a single standard-definition broadcast television stream, including non-broadcast television services that may be limited by current technical rules.

³⁸ *Id.* ¶ 323.

³⁹ *Id.*

⁴⁰ Spectrum Act § 6403(b)(4)(B).

But Univision also believes that all stations that remain on air after the incentive auction and repacking should be permitted to operate under the same, flexible use rules, without having to forego reimbursement of their repacking costs. Although the specific waiver authority contained in the Spectrum Act makes grant of a waiver of the service rules contingent on forgoing reimbursement, this provision does not *prevent* the Commission from initiating a separate proceeding to relax the television service rules more broadly in order to encourage broadcasters to facilitate secondary uses of their spectrum. The Commission's rules already permit digital television station licensees to offer services of any nature on an ancillary or supplementary basis,⁴¹ and a further relaxation of the television service rules would be consistent with the Commission's goal of adopting "a band plan that will provide for flexible use of these bands for new wireless broadband service while continuing to support existing uses."⁴²

Univision encourages the Commission to initiate a separate proceeding to relax its television service rules for all licensees that continue to operate after the incentive auction, including those that choose to participate in a channel sharing arrangement and regardless of whether the licensee retains UHF spectrum or moves to a VHF channel. These steps could help facilitate the development of innovative non-broadcast uses for the broadcast television spectrum.

⁴¹ See 47 C.F.R. § 73.624.

⁴² NPRM ¶ 121.

CONCLUSION

As the leading Spanish-language broadcaster in the United States, Univision appreciates the opportunity to share its unique perspective on the critical issues raised in the NPRM. As the Commission develops rules for completing the most complicated spectrum auction and repacking ever held by any country, Univision looks forward to working with the Commission to ensure that *all* U.S. viewers, and Spanish-speaking and minority viewers in particular, will continue to have access to a vibrant, free, and innovative over-the-air television service.

Respectfully submitted,

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